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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 ANTOINE W. HARRIS,

9 Plaintiff,

10 v.

11 UNITED STATES,

12 Defendants.

Case No.: 3:19-cv-00049-RCJ-WGC

ORDER

Re: ECF No. 15

13
14 Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 15). Plaintiff
15 bases his motion on the fact that (1) he is unable to afford counsel, (2) the substantive issues and
16 procedural matters in this case are too complex for Plaintiff's comprehension and abilities, (3) his
17 incarceration will greatly limit his ability to effectively litigate his case, and (4) there is "absolutely
18 no legal law library in Washoe County Detention Facility, so Plaintiff has no access to law books,
19 he has no way to make copies, nor access to correct forms or materials." (*Id.* at 1.)

20 While any *pro se* inmate such as Mr. Harris would likely benefit from services of counsel,
21 that is not the standard this court must employ in determining whether counsel should be appointed.
22 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

23 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme

1 Court has generally stated that although Congress provided relief for violation of one's civil rights
2 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
3 federal court and not a right to discover such claims or even to litigate them effectively once filed
4 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

5 In very limited circumstances, federal courts are empowered to request an attorney to
6 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
7 however, are exceedingly rare, and the court will grant the request under only extraordinary
8 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
9 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

10 A finding of such exceptional or extraordinary circumstances requires that the court
11 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to
12 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
13 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
14 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Thus far, Plaintiff has shown an
15 ability to articulate his claims. (ECF Nos. 1, 5, 6, 12, 13.)

16 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

17 If all that was required to establish successfully the
18 complexity of the relevant issues was a demonstration of
19 the need for development of further facts, practically all
20 cases would involve complex legal issues. Thus,
21 although *Wilborn* may have found it difficult to
22 articulate his claims *pro se*, he has neither demonstrated
23 a likelihood of success on the merits nor shown that the
complexity of the issues involved was sufficient to
require designation of counsel.

1 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
2 the request for appointment of counsel because the Plaintiff failed to establish the case was
3 complex as to facts or law. 789 F.2d at 1331.

4 The substantive claims involved in this action are not unduly complex. Plaintiff's Amended
5 Complaint was allowed to proceed on the Fifth Amendment inadequate medical care claim against
6 Defendant Doe U.S. Marshals and the Federal Tort Claims Act claim against Defendant United
7 States. (ECF No. 7 at 7.) These claims are not so complex that counsel needs to be appointed to
8 prosecute them.


9 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
10 the likelihood of success on the merits of his claims.

11 The court does not have the power "to make coercive appointments of counsel." *Mallard v.*
12 *U. S. Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under exceptional
13 circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130 S.Ct. 1282
14 (2010)]. Plaintiff has not shown that the exceptional circumstances necessary for appointment of
15 counsel are present in this case.

16 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
17 Counsel (ECF No. 15).

18 **IT IS SO ORDERED.**

19 Dated: July 29, 2020.

20 
21 WILLIAM G. COBB
22 UNITED STATES MAGISTRATE JUDGE
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